



Board of Adjustment Case Report

City of Raleigh
Department of City Planning
One Exchange Plaza
Raleigh, NC 27601
(919) 996-2682
www.raleighnc.gov

Case File: A-139-17

Property Address: 1505 Canterbury Road

Appellant: Mark and Katherine Griffith (adjacent property owners)

Project Contact: Mark Griffith

Nature of Case: Mark and Katherine Griffith, adjacent property owners, appeal an administrative decision as to the interpretations and conclusions made by the City's Engineering Services Department in regards to potential zoning violations on a .37 acre parcel zoned Residential-4 and located at 1505 Canterbury Road.

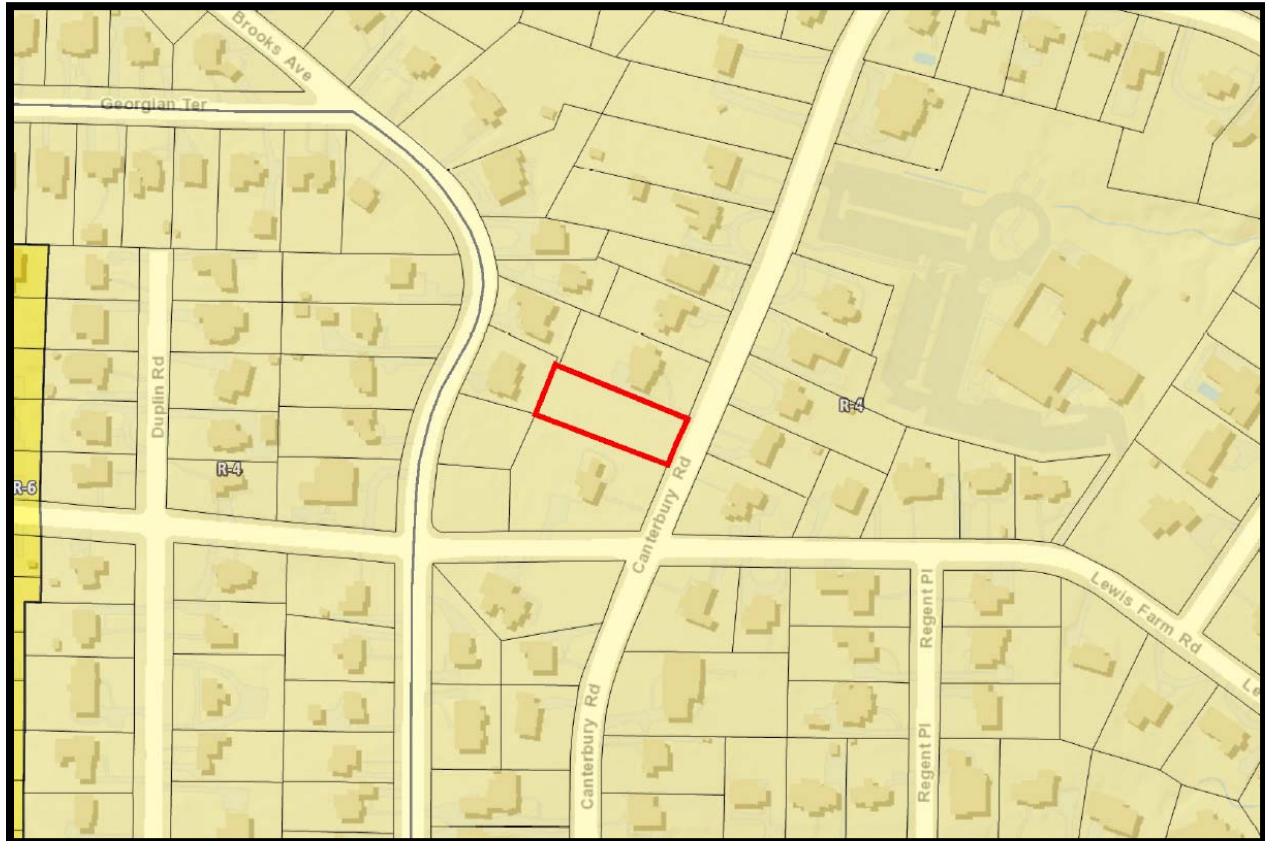


1505 Canterbury Road – Location Map

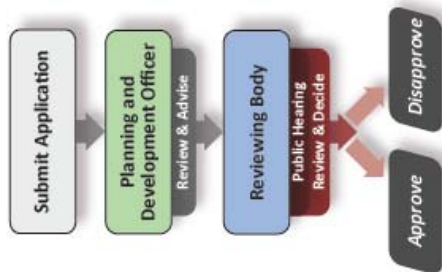
To BOA: 12-11-17

Staff Coordinator: Eric S. Hodge, AICP

**ZONING
DISTRICTS:** Residential-4



1505 Canterbury Road – Zoning Map



Sec. 10.2.11. Appeal of an Administrative Decision

A. Applicability

Any aggrieved person or any agency, officer, department, board or commission of the City, including the City Council, affected by any decision, order, requirement or determination relating to the interpretation, compliance or application of this UDO as made by an administrative official charged with the administration and enforcement of these provisions of the UDO may file an appeal in accordance with the requirements of this section.

B. Reviewing Body

Appeals of an administrative decision are heard by the Board of Adjustment except for Minor Work Certificates of Appropriateness, which are heard by the Raleigh Historic Development Commission.

C. Stay of Proceedings

1. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken (in most instances, this will be the Zoning Enforcement Administrator) certifies that, because of facts stated in the certificate, a stay would, in their opinion, cause imminent peril to life or property or that because the violation is transitory in nature, a stay would seriously interfere with the effective enforcement of this UDO. In that case, proceedings shall not be stayed except by a restraining order granted by of the reviewing body or a court, issued on application of the party seeking the stay, for due cause shown, with copy of notice to the officer from whom the appeal is taken.
2. An appeal shall not stop action lawfully approved; only actions claimed to be in violation of this UDO shall be stayed.

D. Filing Requirements

1. An appeal of any administrative decision shall be made by filing a written notice of appeal specifying the grounds for the appeal with the officer from whom the appeal is taken

and the reviewing body. Notice of appeal provided to the City Clerk is considered to be notice to the reviewing body.

2. Except when a different time period is established in this UDO, the notice of appeal shall be filed by persons who received either mailed notice or notice of decision pursuant to Sec. 10.2.1.C. within 30 days after the date of the application was decided; this time period is applicable to all representatives of such notified persons, including without limitation their tenants and option holders. For all other persons with standing, notice of appeal of any plot plan or site plan shall be filed within 30 days after the receipt from the earlier of any source of actual or constructive notice of the decision within which to file an appeal.
3. A notice of appeal of an administrative decision shall be considered made, when the notice of appeal is provided to the City Clerk and the officer from whom the appeal is taken. The date and time of filing shall be entered on the notice of appeal.
4. In addition to the notice of appeal, within 30 business days from the date of the notice of appeal, an application for an appeal of administrative decision shall be submitted to Planning and Development in accordance with Sec. 10.2.1.B.

E. Approval Process

1. Planning and Development Officer Action

- a. After notice of appeal is provided, the officer from whom the appeal is taken shall transmit to the reviewing body all the papers constituting the record upon which the action appealed from was taken.
- b. Planning and Development shall review the application for an appeal of an administrative decision in accordance with all applicable requirements of this UDO and advise the applicant.
- c. Planning and Development shall provide the notices required in Sec. 10.1.7. and Sec. 10.2.1.C.

Supp. No. 2

10 – 44
Effective Date: September 01, 2013

Part 10A: Unified Development Ordinance
City of Raleigh, North Carolina

2. Reviewing Body Action

Within 60 days after a completed application of an appeal of an administrative decision is filed, the reviewing body shall hold a quasi-judicial public hearing as set forth in Sec. 10.2.1.D.1. and provide notice as required in Sec. 10.2.1.C.6. Appeals filed to the City Manager shall not be heard at a quasi-judicial public hearing.

F. Showings

The showings for the reviewing body shall be those required for the original decision. The reviewing body may affirm or reverse the officer from whom the appeal is taken based on the applicable standards of this UDO.

Supp. No. 2

Part 10A: Unified Development Ordinance
City of Raleigh, North Carolina

10 – 45
Effective Date: September 01, 2013

**CITY OF RALEIGH
NORTH CAROLINA
INTER-OFFICE MEMORANDUM**

To: Ruffin Hall, City Manager

From: Rich Kelly, Director of Engineering Services
Tom Hosey, Director of Development Services

Date: 9/19/2017

Subject: Single-Family Dwelling Permit - 1505 Canterbury Road

MESSAGE:

Background

Mark Griffith of 1507 Canterbury Road has submitted a request to be heard before the City Council on September 19, 2017 in order to discuss perceived issues with the construction of a new home on an adjacent property at 1505 Canterbury Road. These issues generally relate to two areas: stormwater management and zoning enforcement.

Attached to this memo are two separate reports detailing the issues from these two perspectives. These reports are the result of staff in the Engineering Services and Development Services departments conducting a thorough review of the details of this project and associated permit approval processes, including verification that inspections and review processes were consistent with the Unified Development Ordinance as it existed when the project was permitted in late 2015.

Please advise if you require any additional information or have any questions.

**CITY OF RALEIGH
NORTH CAROLINA
INTER-OFFICE MEMORANDUM**

To: Tom Hosey, Director of Development Services

FROM: Alysia Bailey Taylor, Current Planning Manager

SUBJECT: Single-family Dwelling Permit - 1505 Canterbury Road (*Transaction #: 457141*)

Date: 9/19/2017

Background

On December 23, 2015, Rufty Homes, LLC, applied for a single-family dwelling permit for 1505 Canterbury Road on behalf of the property owners, Michael and Ashley Jones. During the review of this permit application Current Planning staff determined the following:

- The address for the permit was designated with R-4 zoning and the regulations of Unified Development Ordinance (UDO) Section 2.2.1 applied, and the property met the criteria to be reviewed for conformance with the “Residential Infill Compatibility” standards of UDO Section 2.2.7.
- Per UDO Section 2.2.7.C the street setback for a property developing under the infill standards is based on the range of setbacks measured based on the two closest lots in either direction along the block face. Based on this criteria and the supporting documentation submitted by the applicant, the 52 foot setback shown on the plot plan was within the allowable street setback.
- The side setbacks per UDO Section 2.2.1. were met or exceeded as they were shown on the plot plan provided by the applicant.
- The rear setback per UDO Section 2.2.1 was exceeded based on the information provided by the applicant.
- Measuring building/wall height:
 - In March of 2017 an official interpretation was provided by the Planning and Zoning Administrator indicating that wall height for residential infill (UDO Section 2.2.7.) should be measured based on the regulations associated with building height in UDO Section 1.5.7.
 - During the time of the review associated with this permit the right side elevation was measured from the foundation of the 1st floor and not average grade, and the basement was not considered based on how the UDO regulations had been applied by staff prior to the official March 2017 interpretation. (*Prior to March 2017 the building height regulations provided in UDO Section 1.5.7 were not considered.*) Based on staff’s application of the UDO regulations during the time that this permit was reviewed and UDO Section 2.2.7.D., which indicated that the maximum allowed wall height adjacent to the side property line is 22 feet, the proposed wall height complied with the application of the UDO standards at the time.
 - During the time of the review associated with this permit the left side elevation was measured from the foundation of the 1st floor and not average grade, and the basement was not considered based on how the UDO regulations had been applied by staff prior to the official March 2017 interpretation. Based on the UDO application during the time that this permit was reviewed and UDO Section 2.2.7.D., which allows for an addition foot of height for each foot of horizontal distance the wall is moved from the side setback line, the height of the proposed residence was found to be in compliance with the UDO regulations.

- No pre or post land elevation information was provided in the permit documentation.

Results

- On January 7, 2016 Current Planning staff approved the permit for 1505 Canterbury Road.
- On February 13, 2017 Current Planning staff approved the zoning inspection.

**CITY OF RALEIGH
NORTH CAROLINA
INTER-OFFICE MEMORANDUM**

To: Blair Hinkle, PE, Assistant Engineering Services Director

From: Lauren Witherspoon, Stormwater Inspections Supervisor

Date: 9/13/2017

Subject: Single-Family Dwelling Permit - 1505 Canterbury Road

MESSAGE:

Background

On December 23, 2015, Rufty Homes, LLC, applied for a single-family dwelling permit for 1505 Canterbury Road on behalf of the property owners, Michael and Ashley Jones. Following the review of this permit application, Stormwater staff determined the following:

- The total lot size was less than one acre, and therefore exempt from being required to install permanent 'Active Stormwater Control Measures' per Section 9.2.2 of the City's Unified Development Ordinance (UDO).
- An erosion and sedimentation control plan was not required prior to issuing the permit and approval for land disturbance activity in accordance with Section 9.4.4 (Standards for Land-Disturbing Activity) of the UDO. Section 9.4.4 requires that a sedimentation control plan must be approved at least 30 days prior to any land-disturbing activity of more than 12,000 square feet (sq. ft). The plot plan submitted with the permit application indicated that the proposed area of disturbance was 10,570 sq. ft.

After these determinations, a permit was issued to the property owners on January 26, 2016. Based on an inspection performed by City of Raleigh Zoning staff, land clearing at 1505 Canterbury Road may have begun in February 2016. Stormwater staff was not aware of (nor required to be made aware of) the land disturbance being conducted because no stormwater permits were issued.

On October 3, 2016, Stormwater staff received a complaint from Zachary Bolen (owner of 1508 Brooks Avenue) regarding stormwater runoff onto his property and inefficient erosion control measures on 1505 Canterbury Road. Mr. Bolen's property is located behind and downstream from the 1505 Canterbury Road property. At that time, Stormwater staff inspected the worksite at 1505 Canterbury Road and concluded that sediment and erosion control measures were in compliance. In addition, it was determined that Stormwater staff could not require any additional runoff controls due to the exempt status of the property per the UDO - Section 9.2.2.

Hurricane Matthew impacted Raleigh on October 8, 2016, which resulted in over five inches of rainfall. Following this rain event, Stormwater staff received a complaint from Katherine Griffith (owner of 1507 Canterbury Road) on October 18, 2016 with concerns that:

- Rufty Homes, LLC, had exceeded the 12,000 sq. ft. threshold for land disturbance;

- Sediment was in her driveway; and
- Standing water was in the back of her home.

Based on the findings from the inspection at 1505 Canterbury Road prior to and following Hurricane Matthew, Stormwater staff concluded that sediment and erosion control measures were in compliance, no sediment was observed at the 1507 Canterbury Road property, and the City could not enforce additional runoff controls due to the UDO - Section 9.2.2 exemption. In addition, Stormwater staff determined that less than 12,000 sq. ft. of land disturbance was occurring at the time of the inspection and that no grading permit was required.

On February 14, 2017, the newly constructed house on 1505 Canterbury Road received a Certificate of Occupancy with prior approvals from each trade inspection group. The house did not need final inspection approval from Stormwater staff because no stormwater permits were issued or required.

On June 20, 2017, Stormwater staff received a complaint from Mark Griffith (1507 Canterbury Road) regarding runoff from 1505 Canterbury Road. On June 21, 2017, Stormwater staff met with the property owners to discuss their concerns. At this time, Stormwater staff offered to contact Rufty Homes, LLC, to provide options for alleviating stormwater runoff from the property. It was also explained that the City could not require the builder to address the issues due to the regulatory exemptions that were in place as of the date of permit application.

Results

On July 11, 2017, Stormwater staff met with Rufty Homes, LLC, representatives and the property owner of 1505 Canterbury Road. During this meeting, Stormwater staff observed that the majority of stormwater from the property is discharged through a retaining wall at the rear of the property, which provides some storage prior to discharging onto the Bolen's property. There appeared to be one area that was receiving concentrated flow of stormwater where a retaining wall ends at the north end of the property and adjacent the driveway.

As a result of further inspection and discussion with the parties involved, Stormwater staff issued a Not in Compliance report on September 5, 2017, received on September 11, 2017, due to the continued concentration of stormwater flow, displacement of groundcover, and steep slopes. Following the Not in Compliance report, Rufty Homes, LLC, informed Stormwater staff that a small berm had been constructed to allow stormwater to enter the drain. On September 12, 2017, Stormwater staff met with Rufty Homes, LLC representatives, the property owner of 1505 Canterbury Road, and his representation. During this meeting Rufty Homes, LLC verbally committed to establish a plan and stabilize this slope by September 25, 2017. Staff believes this to be the extent of our regulatory authority under the UDO, and has encouraged neighboring property owners who are experiencing property damage to seek alternative remedies.

It is worth noting that, while it did not affect this case due to timing, the adoption of TC-2-16 in November of 2016 has helped to address this type of impact being experienced by neighbors of newly-permitted infill development. The changes to the UDO that resulted from TC-2-16 include impervious area limitations based on zoning type. All single-family dwelling permits are now reviewed by Stormwater staff for impervious limits including properties that were previously exempt from Section 9.2 of the UDO. However, the 1505 Canterbury Road property is designated as R-4 zoning which would have had a TC-2-16 impervious limitation of 38% (if

approved after November 2016). The plot plan submitted with the permit application indicates an approximate 30% of total impervious on the property. If the 1505 Canterbury Road property had been permitted after November 2016, this property would have been in compliance with the TC-2-16 limitation and no stormwater control measure and/or downstream flood study would have been required.

The Stormwater Management Program added an inspector position in May 2017 in order to dedicate a Stormwater Inspector specifically for this type of infill residential development. Among this position's responsibilities is to encourage builders during construction to alleviate impacts to downstream property owners when situations such as these occur, and to assist the parties involved in resolving similar issues moving forward during the construction phase of projects.

It is the opinion of the Stormwater Management Program that the regulations governing development of this type were applied correctly, and that staff acted appropriately in carrying out those regulations. Staff will continue to facilitate discussion between the parties to assist them in finding resolution, to the extent possible, moving forward.

Appeal of Administrative Decision Application



RALEIGH
DEPARTMENT OF
CITY PLANNING



Department of City Planning | 1 Exchange Plaza, Suite 300 | Raleigh, NC 27601 | 919-996-2626

Nature of appeal (If more space is needed, submit addendum on separate sheet): Please see the attached Notice of Appeal dated September 29, 2017, to the City Clerk and Blair Hinkle outlining the ground of appeal and its Exhibits A-1 and A-2, which include, among other things, a letter from Blair Hinkle containing administrative decisions serving as the basis of the administrative decisions being challenged.		OFFICE USE ONLY Transaction Number <i>A-139-17</i>
Provide all previous transaction numbers for Coordinated Team Reviews, Due Diligence Sessions or Pre-Submittal Conferences in the spaces below. If this property was the subject of a previous Board action, provide the case number.		
<i>378347</i>		

GENERAL INFORMATION		
Property Address 1505 Canterbury Road	Date October 8, 2017	
Property PIN 0794799405	Current Zoning R-4	
Nearest Intersection Canterbury Road / Lewis Farm Road	Property size (in acres) .37 acres	
Property Owner Information		
Property Owner Mark and Katherine Griffith	Phone 919 782-2589	Fax n/a
Owner's Mailing Address 1507 Canterbury Road (27608)	Email mark.griffith@troutmansanders.com	
Contact Person Information		
Project Contact Person Mark Griffith	Phone 919 782-2589	Fax n/a
Contact's Mailing Address 1507 Canterbury Road (27608)	Email mark.griffith@troutmansanders.com	
Property Owner Signature <i>Mark Griffith</i>	Email mark.griffith@troutmansanders.com	
Notary Sworn and subscribed before me this <i>9th</i> day of <i>October</i> , 20 <i>17</i>	Notary Signature and Seal <i>Benjamin R. Kuhn</i> My Commission Expires: <i>6/16/2019</i>	

RECEIVED
CITY CLERKS OFFICE

9/29/17 *MS*
11:28 AM

TO: Gail G. Smith, City Clerk
Blair Hinkle, Assistant Engineering, Services Director

FROM: W. Mark Griffith, Esq., and Katherine B. Griffith (the "Appellant")

DATE: September 29, 2017

This matter was brought before the Raleigh City Council during its regular meeting on September 19, 2017, and was remanded during that meeting to the Growth and Natural Resources Committee for review. This appeal is being made to preclude any future holding that the issues referenced herein have been waived and/or not properly preserved by the Appellant.

NOTICE OF APPEAL

Please accept this Notice of Appeal as to the interpretations and conclusions referenced below in the letter attached hereto as Exhibit A-1 from Blair Hinkle to Mark Griffith, dated September 1, 2017, but mailed on September 5, 2017 (and received by Appellant on September 9, 2017).

Grounds for Appeal

In Exhibit A-1, Mr. Hinkle is responding to an email from the Appellant to Nicolette Fulton, Associate City Attorney, dated August 16, 2017, and attached hereto as Exhibit A-2. In Exhibit A-2, the Appellant referenced numerous continuing violations of the UDO at 1505 Canterbury Road.

Mr. Hinkle's decision in Exhibit A-1 is being appealed on the following grounds:

- 1) Section 9.4.4 of the UDO requires the owner/builder to obtain a land disturbance permit and approval of an erosion control and sedimentation plan prior to engaging in a land disturbance of 12,000 square feet or more. In Section 1 of Exhibit A-1, Mr. Hinkle applies an inaccurate interpretation of Section 9.4.4 of the UDO by excluding the footprint of the house under construction from the calculation of the amount of land disturbance at 1505 Canterbury Road. 1505 Canterbury Road was a wooded lot when construction began and there has never been any debate that the footprint of the house should be included in making such calculation; the builder itself included the footprint of the house in providing its inaccurate calculation that it would only disturb 10,570 square feet. Mr. Hinkle cannot provide any cite in the UDO to support such an application of Section 9.4.4 to a vacant lot that previously did not have any building structure located thereon. The Appellant has provided overwhelming evidence that more than 16,000 square feet of land disturbance occurred at 1505 Canterbury Road and that the owner and the builder should have obtained a land disturbance permit and approval of an erosion control and sedimentation plan before

engaging in such disturbance. It is our position that the owner and builder are still required to file and obtain approval of an erosion control and sedimentation plan.

- 2) In Section 2 of Exhibit A-1, Mr. Hinkle asserts that Section 9.4.4 A.2 of the UDO only relates to damages and disturbance as it relates to the contribution of sedimentation not an increase in stormwater or effects of flooding. Mr. Hinkle states that his team has not observed the occurrence of off-site sedimentation during their inspections and therefore Section 9.4.4 A.2 does not apply. Mr. Hinkle and other City officials have been provided with photographic evidence of sedimentation on the property of the Appellant at 1507 Canterbury Road, and have viewed evidence of the same on their own personal examinations of 1507 Canterbury Road. Furthermore, our expert team at Spangler Environmental agrees with Appellant's position that there is evidence of past and/or present sedimentation on 1507 Canterbury Road that emanated from 1505 Canterbury Road, and that such is reflected in the photographic evidence that Appellant has provided to the City.
- 3) In Section 3 of Exhibit B-1, Mr. Hinkle states that the City will not require groundcover be applied to 1505 Canterbury Road in accordance with Section 9.4.4 F of the UDO because he and his team have not observed sedimentation. Mr. Hinkle himself and other City officials have been provided with photographic evidence of sedimentation at 1507 Canterbury Road, and have viewed evidence of the same on their own personal examinations of 1507 Canterbury Road. As mentioned above, our expert team at Spangler Environmental agrees with Appellant's position that there is evidence of past and/or present sedimentation on 1507 Canterbury Road that emanated from 1505 Canterbury Road, and that such is reflected in the photographic evidence that Appellant has provided to the City.
- 4) In Section 5 of Exhibit B-1, Mr. Hinkle states that Section 9.4.5 requiring the installment of permanent erosion and sediment control measures does not apply because he and his team have not observed any erosion or sedimentation from 1505 Canterbury Road. Mr. Hinkle himself and other City officials have been provided with photographic evidence of sedimentation on 1507 Canterbury Road, and have viewed evidence of the same on their own personal examinations of 1507 Canterbury Road. Again, as stated above, our expert team at Spangler Environmental agrees with Appellant's position that there is evidence of past and/or present sedimentation on 1507 Canterbury Road that emanated from 1505 Canterbury Road, and that such is reflected in the photographic evidence that Appellant has provided to the City.



City Of Raleigh
NORTH CAROLINA

September 1, 2017

Mark Griffith
1507 Canterbury Road
Raleigh, NC 27608

Mr. Griffith,

On August 21, 2017 we received an email from you regarding Section 9.4 of the City of Raleigh Unified Development Ordinance (UDO) and its relevance and application to the property located at 1505 Canterbury Road. We have carefully reviewed your comments and have developed responses below for each Section of the UDO that you referenced.

- 1) 9.4.4. ("Standards for Land Disturbing Activity") requires the owner/builder to obtain a land disturbance permit and approval of an erosion control and sedimentation plan prior to engaging the land disturbance. It is our position, and we believe that there is no reliable evidence to the contrary, that more than 16000 square feet was disturbed at 1505 Canterbury Road. In addition, the failure to obtain the permit was a violation of the UDO, but it is not the only requirement still to be met by the owner. There are continuing obligations post construction of the owner under Section 9.4.4 (and the Act) that are still not being met. For instance, the owner is still required to file and obtain approval of an erosion control and sedimentation plan.

When the City received a complaint regarding 1505 Canterbury Road, staff inspected the site and determined that less than 12,000 sq ft of land disturbance was present on the property at that time. At the time of the inspection, the house was being constructed which was therefore excluded in the overall area of disturbance. When responding to complaints, the City requires a grading permit (and submittal of a sedimentation and erosion control plan) when the area of disturbance is 12,000 sq ft or greater at the time of inspection.

Had the City been notified that the area of disturbance would be greater than or equal to 12,000 sq ft at the time of building permit application, a grading permit would have been required. As a note, section 9.4 of the UDO can be applied to a property even when a sedimentation and erosion control plan is not submitted to the City and permit is not obtained. Please see below for additional information.

- 2) 9.4.4. A.2 ("Protection of Property") still applies. As stated, it requires persons engaging in land disturbing activities to take "all reasonable measures" to protect public and private property from damages from land disturbing activities. Our expert team is prepared to assert that the owner/builder have been woefully deficient in complying with this ordinance and the State's law and associated rules. As you saw, at 1507 Canterbury Road, we are experiencing damages (and the owner, Mr. Jones, has acknowledged as much in the attached email) through the lack of any measures taken in the north and front side of their property to mitigate the massive grade change and rerouting of stormwater flow toward our property. This has resulted in sediment deposition on our property as we have shown in our photographic documentation.

Page 2 of 3
Mr. Mark Griffith

Per Article 12.2 of the UDO, Land Disturbance is defined as "Any use of land by any person in residential, recreational, industrial, educational, service, institutional, civic, office or commercial development, highway and road construction and maintenance that results in a change in the natural cover or topography or alters the natural structure of the land mass and that may cause or contribute to sedimentation". Therefore Section 9.4.4 A.2 of the UDO only relates to damages from land disturbance as it relates to the contribution of sedimentation not increase in stormwater or effects of flooding.

During our inspections it was not observed that off-site sedimentation has occurred. Therefore, Section 9.4.4 A.2 does not apply.

- 3) 9.4.4 E. ("Graded Slopes and Fills") and 9.4.4 F ("Ground Cover") are still applicable, and it is our position that the owner is not in compliance with these ordinances.

During our inspections it appeared that some pine straw has been displaced around the retaining wall adjacent to 1507 Canterbury Road and that the slope is such that there is potential for erosion to occur at this location. Therefore, per Section 9.4.4 E we are going to issue a Not in Compliance report requiring adequate erosion control at this location. It is standard practice for the City of Raleigh Stormwater Inspections Section to issue Not in Compliance reports prior to issuing a Notice of Violation.

Section 9.4.4 F of the UDO states that groundcover shall be installed to restrain erosion and retain sediment within the boundaries of the tract. Since we have not observed erosion or sedimentation occurring on the 1505 Canterbury Road property we will not be requiring that groundcover be applied at this time. However, we believe that resolution of the Not in Compliance will most likely include provisions for groundcover.

- 4) 9.4.4 G.1 ("Permanent Protection") and G.2 ("Post Construction Velocity") are still applicable, and it is our position that the owner is not in compliance with these ordinances.

Section 9.4.4 G.1 requires that a discharge point be permanently protected from accelerated erosion. During inspections we have not observed a discharge point where accelerated erosion is occurring. Therefore, this Section does not apply.

Section 9.4.4 G.2 is a post construction velocity requirement as it relates to discharge to a watercourse. The property at 1505 Canterbury Road does not discharge stormwater directly into a watercourse. Therefore, this Section does not apply.

- 5) 9.4.5 ("Maintenance") still applies, and again, it is our position that the owner is not in compliance with this ordinance.

Section 9.4.5 relates to installation of permanent erosion and sediment control measures. We have not observed any erosion or sedimentation from the 1505 Canterbury Road property. Therefore, this Section does not apply.

Per your public records request, City of Raleigh Information Technology staff have run the email search according to the criteria that was submitted to the City of Raleigh. The emails that were provided you are

One Exchange Plaza
1 Exchange Plaza, Suite 1020
Raleigh, North Carolina 27601

City of Raleigh
Post Office Box 590 • Raleigh
North Carolina 27602-0590
(Mailing Address)
Printed on Recycled Paper

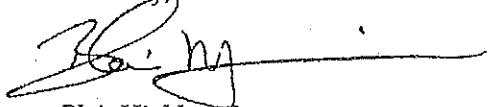
Municipal Building
222 West Hargett Street
Raleigh, North Carolina 27601

Page 3 of 3
Mr. Mark Griffith

the complete record obtained through these searches. If additional information is requested, please provide additional criteria via a formal request through publicrecords.request@raleighnc.gov.

Please let me know if you have any further questions or require any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Blair Hinkle", followed by a long horizontal line.

Blair Hinkle, PE
Assistant Engineering Services Director

cc. Ben Brown, PE, Stormwater Administrator for Programs
Lauren Witherspoon, Stormwater Inspections Supervisor
Project File

One Exchange Plaza
1 Exchange Plaza, Suite 1020
Raleigh, North Carolina 27601

City of Raleigh
Post Office Box 590 • Raleigh
North Carolina 27602-0590
(Mailing Address)
Printed on Recycled Paper

Municipal Building
222 West Hargett Street
Raleigh, North Carolina 27601

Griffith, Mark

From: Griffith, Mark
Sent: Monday, August 21, 2017 8:57 AM
To: 'Fulton, Nicolette'
Cc: 'Zachary C. Bolen'; 'Jim Spangler'; 'Courtney Bolen'; 'kbgriffith@me.com'; Griffith, Mark; 'wmarkgriffith@gmail.com'
Subject: 1505 Canterbury Road
Attachments: Document_08172017_084028.pdf; Jones Emails.pdf

Sediment

Nicolette, as we have mentioned before, many thanks for your time. We have reviewed Section 9.4.4 of the UDO (which of course is based off of the State's Sedimentation and Pollution Control Act at NCGS Sec 113A-50 et seq., the "Act"), and wanted to highlight some things for you and your team to note and consider as you do the same.

- 1) 9.4.4. ("Standards for Land Disturbing Activity") requires the owner/builder to obtain a land disturbance permit and approval of an erosion control and sedimentation plan prior to engaging the land disturbance. It is our position, and we believe that there is no reliable evidence to the contrary, that more than 16000 square feet was disturbed at 1505 Canterbury Road. In addition, the failure to obtain the permit was a violation of the UDO, but it is not the only requirement still to be met by the owner. There are continuing obligations post construction of the owner under Section 9.4.4 (and the Act) that are still not being met. For instance, the owner is still required to file and obtain approval of an erosion control and sedimentation plan.
- 2) 9.4.4. A.2 ("Protection of Property") still applies. As stated, it requires persons engaging in land disturbing activities to take "all reasonable measures" to protect public and private property from damages from land disturbing activities. Our expert team is prepared to assert that the owner/builder have been woefully deficient in complying with this ordinance and the State's law and associated rules. As you saw, at 1507 Canterbury Road, we are experiencing damages (and the owner, Mr. Jones, has acknowledged as much in the attached email) through the lack of any measures taken in the north and front side of their property to mitigate the massive grade change and rerouting of stormwater flow toward our property. This has resulted in sediment deposition on our property as we have shown in our photographic documentation.
- 3) 9.4.4 E. ("Graded Slopes and Fills") and 9.4.4 F ("Ground Cover") are still applicable, and it is our position that the owner is not in compliance with these ordinances.
- 4) 9.4.4 G.1 ("Permanent Protection") and G.2 ("Post Construction Velocity") are still applicable, and it is our position that the owner is not in compliance with these ordinances.
- 5) 9.4.5 ("Maintenance") still applies, and again, it is our position that the owner is not in compliance with this ordinance.

If the City feels differently with respect to any of these items above, please provide us with your reasoning for the same. If you need further information we will certainly do our best to obtain it for you.

As mentioned above, our expert team stands ready to discuss this matter and each of these ordinances with you and your team, how the ongoing at 1505 Canterbury Road and our properties fit within 9.4.4 of the UDO and the Act, and to provide further insight and information to the extent that you want or need it.

Finally, I have also attached some pictures and videos of 1505 Canterbury Road from July, September, October and November 2016. The photos supplement what you have already been provided and show at least three things: 1) that there was readily visible sediment in the form of red mud on our property emanating from 1505 Canterbury Road as

Exhibit A-2

early as July 2016; 2) that there was even more readily visible sediment in the form of red mud on our property in October 2016 -of course, emanating from 1505 Canterbury Road; and 3) contrary to the builder's construction permit application, our photographic documentation and any on-site visit show that nearly every inch of 1505 Canterbury Road was disturbed – more than 16,177.2 square feet based on tax records showing the property at .37 acres. Also, as you, Ben and Blair have seen for yourself, erosive flow and sedimentation continues on our properties today. On 1505 Canterbury Road, as you have seen, there has been no permanent groundwater or slope stabilization installed by this owner or other persons responsible for land disturbance to stop the sediment that is coming off of the front of his property (now with its several feet of elevation and a new grade aimed at our property).

Note that the pictures and videos in October 2016 were made around the same time that different persons at the City apparently went out to 1505 Canterbury Road and inspected it. See the attached October 2016 chain of emails by and among McKenzie Gentry, Christopher Bridgers and Lauren Witherspoon. In that chain of emails, Lauren mentions that she forwarded "design exception information" to the builder. As I mentioned to you the other day, we filed a broad public records request and had follow ups with David Blount and Lisa Coombes regarding the same. The correspondence with the builder that Lauren mentions in her email has not been provided to us. We have been told that we have been provided all of the public records there are and that such does not include a single note, draft, inspection document, or piece of correspondence in any form between the City and this builder or the owner. Can you check with the City's custodian to be certain that we have been provided all notes, field logs, photographs, drafts, or other documents received, reviewed, created, or otherwise used in any way by the City regarding 1505 Canterbury Road, including, but not limited to, by Lauren, McKenzie, and Chris, related to 1505 Canterbury Road?

Again, as we have mentioned before, we greatly appreciate your time and the time your team has taken to review this matter. This is an unfortunate situation that we think should not be happening, and as you know, we are incurring damages that we think are due, among other things, to ongoing violations of this ordinance. Nonetheless, and fortunately, we think the City's UDO – this ordinance and the Act in particular - provides many avenues of recourse for these damages.

We look forward to hearing from you and your team. If there is any further information you need, do not hesitate to contact us.

Many thanks,

Mark

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OWNERS OF PROPERTY LOCATED WITHIN 100 FEET OF 1505 CANTERBURY ROAD

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Penny Small Hage
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1502 Canterbury Road
Raleigh, NC 27608

Michael D. Jones
Ashley T. Jones
1505 Canterbury Road
Raleigh, NC 27608

Judy L. Swenson
1506 Canterbury Road
Raleigh, NC 27608

William Mark Griffith
Katherine B. Griffith
1507 Canterbury Road
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Karen G. Gibson
1509 Canterbury Road
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